

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

RECEIVED

JUN 06 2022

TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
SHRIVEPORT LOUISIANA
BY *SV*

Jorge Alonzo Reg#30321-047
Jaun Frausto B. Reg#81055-408
Bairo Cardona Perez Reg#37678-208
Daniel Ascencio Reg#20189-104
SalvadorHernandez Reg#225810509
Jose Ramirez Reg# 82408-279
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Case No :

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~~Genave Sen Chan Reg#02255-479~~
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Jose Ceballos Reg#17858-104
Bentley Jenkins Reg#34007-177
Samuel Roy Abram

Plaintiff's

V.

Pollock FCI Warden and Pollock Federal Correctional Institute

Defendant

MOTION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

Comes now the plaintiff's moving this court to issue an injunction against Pollock FCI's practice of restricting and limiting the right's of the plaintiff's to use there funds for commissary due to cell phones and related paraphanelia being found in the posession of inmates and in the housing units. The plaintiff's move this court for an award of damages due to past violations of the plaintiff's right's. The plaintiff's move this court to issue an immediate order allowing the plaintiff's to patronize the commissary in order to spend the full spending limit consistent with the good order and security of the prison. The plaintiff's move this court to issue an order mandating that there be no retaliatory actions taken against the plaintiff's in any shape, form or fashion due to this petition.

DATE _____

X _____

JUAN FRAUSTO B

Daniel Ascencio
Salvador Hernandez

B.M. H

Samuel Ray Abraham Benefing

Samuel Ray Abraham Benefing

5.5

Jorge C Gonzalez

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Jose Herrero

BALLINAS - JOAN

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Juarez Jesus

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ISABEL HERBERA

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Luis Alvarado

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Walter S. Canoll

Eric Creek

Sherrin A. Brinkett

Bentley Jenkins

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Pollock Federal Correctional Institute

PO Box 4050

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Plaintiff's

V.

Pollock FCI Warden
Defendant

MEMORANDUM OF LAW AND DECLARATION IN SUPPORT OF
PLAINTIFFS MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Comes now the plaintiff's moving this court to issue an injunction against Pollock FCI's practice of restricting and limiting the right's of the plaintiff's to use there funds for commissary due to cell phones and related paraphanelia being found in the posession of inmates and in the housing units. The plaintiff's move this court for an award of damages due to past violations of the plaintiff's right's. The plaintiff's move this court to issue an immediate order allowing the plaintiff's to patronize the commissary in order to spend the full spending limit consistent with the good order and security of the prison. The plaintiff's move this court to issue an order mandating that there be no retaliatory actions taken against the plaintiff's in any shape, form or fashion due to this motion.

LAW AND ANALYSIS.

To get an injunction the plaintiff's must show that they do not have an adequate remedy at law which means that an award of damages or other relief will not adequately protect them. See Morales v. Trans World Airlines, Inc., 504 U.S. 374, 381, 112 S.Ct. 2031 (1992) The plaintiff's must also show that there is an actual danger of future violation of there right's.

Past violations by themselves will not entitle them to an injunction. See Farmer v. Brennan, 511 U.S. 825, 846, 114 S.Ct. 1970 (1994).

ARGUMENT.

The Federal Bureau of Prisons in Program Statement 5270.09 Inmate Discipline Program, Appendix C INMATE RIGHTS AND RESPONSIBILITIES, NO. 11 gives prisoners the right to use their funds for commissary and other purchases, consistent with the institution security and good order. (See Appendix C Attached). The Warden at Pollock FCI for the last four years has implemented the policy of restricting and or "limiting" the purchase of commissary due to cell phones being found in the prison.

These phones are found in the inmates' possession or quarters. These inmates are taken to the special housing unit (if not overcrowded), sanctioned by the Disciplinary Hearing Officer (DHO) in accord with Program Statement 5270.09 and possibly referred to AUSA (Assistant United States Attorney) for prosecution. These prisoners receive Due Process in regards to the contraband they are found in possession of however, the other prisoners most of the time are placed on a restriction or limitation without an incident report, investigation or hearing by the DHO.

This policy by the Warden does violate the very spirit of The Fifth Amendment of the United States of America and the Right guaranteed by the Federal Bureau of Prisons. (See Appendix C Supra) In Sandin v. Conner 515, U.S. at 484 the "deprivation of this liberty interest imposes an atypical and significant hardship in relation to the ordinary incidents of prison life". This invokes the Due Process Clause under the Constitution. This policy by the Warden has encouraged a prison environment in which there will only be relief from these commissary sanctions if someone "gives information to the staff about cell phones through the Warden's established crimestoppers hotline". This requirement has fostered inmate assaults, delivery and a speculative mindset due to the basic needs of the plaintiffs and prison population being deprived. The \$20.00 (TWENTY UNITED STATES DOLLARS) limit at the commissary has not been sufficient to meet the basic needs of the plaintiff's and prison population.

The plaintiff's have shown that the "validity of this prison policy is not a valid one". (See Overto v. Bazzetta, 539 U.S. 126, 132 (2003)). This prison has been reprimanded twice by the Office of Inspector General's office from Washington D.C. The Inspector General representative had to come to Pollock FCI to interview a prisoner due to the Warden's violation of this right.

Examining the issue of exhaustion, the plaintiff's are required to comply with the agency's deadlines and other critical procedural rules.....Jones v. Bock, 549 U.S. 199,216(2007). However in Ross v. Blake, the court identified three circumstances in which an administrative remedy would be considered "not available". 136 S.Ct.1850,1862(2016). First,"an administrative remedy procedure is unavailable when (despite what regulations or guidance materials may promise) it operates as a simple dead end-with officers unable or consistently unwilling to provide any relief to the aggrieved inmates".Id Next," an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use."Id. Finally, a remedy may be unavailable "when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation , or intimidation." Id.at:1860

On more than one occasion the plaintiffs have filed BP-8's and BP-9's in accord with §542.013(a) and §542.14(a). The most recent time the plaintiff's filed these forms was when the Director of the BOP came to Pollock FCI, Staff came into D-3 Unit and agreed to start letting us shop without restriction's if the administrative remedies were dropped. There was no reason to think that the agreement was in bad faith so...the administrative remedies were dropped. Soon after the remedies were dropped the Warden then started to implement this policy again so this machination and representation by the staff does render the administrative remedy process unavailable.

DAMAGES.

In general there is no right to a jury trial in injunctive cases.(See City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S.687,719,119 S.Ct.1624 1999). However the plaintiff's have brought both injunctive and damage claims so there is a right to a jury trial on the damage claim and the court must handle the case as to preserve that right. Though this usually means hearing the damage claims first.(See Beacon Theaters v. Westover, 359 U.S.500,510-11,79 S.Ct.948 This rule does not prevent a court from granting temporary (preliminary) injunctive relief pending a final disposition of all claims.(See Dairy Queen v. Wood,369 U.S. 469,479 n.20,82 S.Ct. 894(1962)).

See also Monterey Supra:(The right of a jury trial is not eliminated, of course by virtue of the facts that, under our modern unified system, the equitable relief of an injunction is also sought".(Scalia J. concurring)).

CONCLUSION:

The plaintiff's will suffer "irreparable injury" without an injunction. The heart and soul of the Fifth Amendment is at stake here due to the Constitutional Right of the Fifth Amendment stating: "No person shall be held to answer for a capital or, otherwise infamous crime, unless on a presentment or indictment" et al. The idea of being sanctioned for incidents without due process and being deprived of the right to patronize commissary will harm the plaintiff's. (See Winter v. Natural Resources Defense Council, Inc., 129 S.Ct.at 375)

The plaintiff's will suffer more without an injunction than the Warden will suffer if the injunction is GRANTED. The plaintiffs and prison population have need's that the local commissary can further. The purchasing of legal material, hygiene, medicine, clothing, shoes for recreation, food due to the budget of the kitchen being cut and other items for nutritional needs that prisoner's have in light of the pandemic. Therefore the prisoner's interest in patronizing the commissary far outweigh the Wardens policy of punishing a Unit or prison due to cellphones being found. (Lambert v. Buss, 498 F.ed 446, 452-53 (7th Cir. 2007)) The balance of hardships does favor the plaintiff's.

The plaintiff's are likely to succeed on the merits of this case in the end. The very fact that the the plaintiff's Fifth Amendment Rights have been violated along with the right guaranteed by the Federal Bureau of Prisons to use their funds at commissary when the safety and orderly running of the prison has not been violated then the success of the plaintiff's claims should be heard by a jury. (See Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal, U.S 418,428,126 S.Ct 1211(2006)).

It is in the public interest to grant the injunction because protecting the Constitutional Rights of the plaintiff's is always in the public's interest. The right of the plaintiff's to use their funds at commissary without the "quid pro quo" of having to provide information on illicit activities taking place on the compound or unit is in the public's interest to uphold. The Fifth Amendment also states that "No person shall be deprived of a liberty without due process". (See Phelps-Roper v. Nixon, 545 F.3d 685,690(8th Cir. 2008) ("...[I]t is always in the public interest to protect constitutional rights."))

Usually a litigant who obtains interim injunctive relief is asked to post security. Rule 65(c), Fed.R.Civ.P. However, the Plaintiff(s) are indigent prisoner(s) and are unable to post security. The court has discretion to excuse an impoverished litigant from posting security. Elliott v. Kiesewetter, 98 f.3d 47, 60 (3d. Cir. 1996) (stating that district courts have discretion to waive the bond requirement contained in Rule 65(c) of the Federal Rules of Civil Procedure if "the balance of the[] equities weighs overwhelmingly in favor of the party seeking the injunction"); Moltan Co. v. Eagle-Pitcher Industries, Inc., 55 F.3d 1171, 1176 (6th Cir., 1995). In view of the serious violations of prisoner rights and danger faced by the plaintiff(s), the court should grant the relief requested without requiring the posting of security.

For the foregoing reasons, the court should grant the plaintiffs motion in all respects.

Pursuant to 28 U.S.C. § 1746, We declare under the penalty of perjury that the foregoing is true and correct.

Part 2 A Power of Attorney
Imprisoned
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Adrian RH
Johany Cedeño
93154-051 Jonathan
Alex Vengust
Sanchez
Pablo R. Rivera
Luis Gomez
Jose Chavera
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LUSTOIX
Abby Belser
Elias Echeverria
Javier Silerio
David Diaz Loredo
Jose Herres
Ballinas - Juan
Pedro Gutierrez
Juarez Jesus
ABEL SANCHEZ
ISAIRAS HC
Carlos Hernandez
Luis Alvarado
Arturo Mancial
Walter L. Carroll
Sherwin A. Birkett
Jose Gonzalez
Jose Gonzalez
Abdiel DeJesus
Eric Clark
Bentley Jenkins
Sergio Medina
Orlando Armenta

Date _____

X _____

Pollock FCI
 PO BOX 4050
 Pollock, Louisiana 71467

INMATE DISCIPLINE PROGRAM PROGRAM STATEMENT 5270.09
APPENDIX C. INMATE RIGHTS AND RESPONSIBILITIES

participate in the use of law library use these resources in keeping
reference materials to assist with the procedures and
you in resolving legal problems. schedule prescribed and to
You also have the right to receive respect the rights of other
help when it is available through inmates to the use of the
a legal assistance program. materials and assistance.

9. You have the right to a wide 9. It is your responsibility
range of reading materials to seek and use such
for educational purposes materials for your personal
and for your own enjoyment. These benefit, without depriving
materials may include magazines others of their equal rights
and newspapers sent from the to the use of this material. community, with certain restrictions.

10. You have the right to participate 10. You have the responsibility to
in educational, vocational training, take advantage of activities
counseling, and employment programs which will aid you to live a
as resources permit, and in keeping successful and law-abiding
with your interests, needs, and life within the institution
abilities. and in the community. You will be expected
to abide by the regulations governing the participation in such activities.

11. You have the right to use your 11. You have the responsibility to
funds for commissary and other meet your financial and legal
purchases, consistent with institution obligations, including, but
security and good order, for not limited to, DHO and court-
opening bank and/or savings accounts, imposed assessments, fines,

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Plaintiff's
Pollock Federal Correctional Institute
PO BOX 4050
Pollock, Louisiana 71467

V.

Warden of Pollock FCI and Pollock Federal Correctional Institute
1000 Airbase Road
Pollock, Louisiana 71467

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the plaintiff's supporting declaration and memorandum of law it is ORDERED that defendants Warden of Pollock FCI and Pollock Federal Correctional Institute show cause in room 105, of the United States Courthouse, 515 Murray Street, Alexandria, Louisiana 71301 on the ___ day of June, 2022 why a preliminary injunction should not issue pursuant to Rule 65(a), Fed.R.Civ.P., enjoining the said defendants, their successors in office, agents and employees and all other persons acting in concern and participation, that the plaintiffs have immediate access to use their funds at the commissary located at Pollock FCI in accordance with the national spending set by the Federal Bureau of Prisons.

IT IS FURTHER ORDERED THAT effective immediately and pending the hearing and determination of this matter, defendants Warden of Pollock FCI and Pollock Federal Correctional Institute shall: CEASE AND DESIST the policy and or practice of limiting or restricting the plaintiffs right to use their funds at commissary according to the Federal Bureau of Prisons national limit.

IT IS FURTHER ORDERED that this order to show cause, and all other papers attached to this application, shall be served on defendants Warden of Pollock FCI and Pollock Federal Correctional Institute by June 8th, 2022 and the United States Marshall Service is hereby directed to effectuate such service.

Done in Chambers this ____ day of June, 2022.

UNITED STATES DISTRICT COURT JUDGE